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THE TARIFF HISTORY OF THE REPUBLIC OF TEXAS*

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CHAPTER I

EARLY TARIFF MEASURES

A government which has recently established its independence is expected to move with uncertain and vacillating steps in setting up institutions; and the establishment of a financial system is the most difficult task that confronts it, since inexperienced men must in the nature of things be in control, and many different interests must be placated. It is not strange, then, that throughout the period of the Republic many of the laws of Texas, particularly those relating to finance, partook of the nature of experiment, and were frequently changed to meet changing conditions. Thus, there were no less than seven laws passed between 1835 and 1842, establishing custom duties, altering rates already established, regulating the methods of collection, and pre-

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Since preparing the most of the paper I have read *A Financial History of Texas*, by Professor E. T. Miller of the University of Texas. This book contains an excellent summary of the tariff system of the Republic of Texas. I have made free use of the footnotes in gathering additional material, particularly on the relation of the tariff to other fiscal policies. I desire also to express my indebtedness to Mr. E. W. Winkler, Reference Librarian in the University of Texas, for many helpful suggestions; to Mr. Sinclair Moreland, Archivist in the Texas State Library; and to Professor Eugene C. Barker for helpful suggestions and criticisms, and for the inspiration of his teaching.

scribing what form of money should be received in payment of duties; and even in the years when no tariff bill was enacted the question was up in Congress in some form. In some cases a bill had hardly had time to take effect before another was passed altering its provisions or repealing it altogether.

By the ordinance creating the provisional government passed by the Consultation, November 13, 1835, power was granted to the General Council "to impose and regulate imposts and tonnage duties, and provide for their collection under such regulations as may be the most expedient." In his first message Governor Smith recommended the establishment of a tariff, and it was estimated by the finance committee that tonnage duties alone would amount to \$125,000. On December 8, 1835, the General Council passed "An Ordinance and Decree establishing and imposing Duties on Imports and Tonnage and for other purposes," and this ordinance received the signature of the governor on the 12th.¹ The ordinance named without defining six revenue districts—Sabine, Galveston, Brazos, Matagorda, Jackson, and Aransas. Duties were to be collected at the rate of 20 per cent ad valorem on all goods entitled to debenture in the ports from which they were exported, and at the rate of 10 per cent on all others, with the exception of household goods, guns and ammunition, which were to be admitted free. On December 27 a supplementary act raised these duties to 25 per cent and 15 per cent respectively. A supplementary act had already provided on the 15th for a tonnage duty of \$1.25 a ton on all vessels of more than ten tons, and for a specific duty of 12½ cents a gallon on whiskey and wines.²

No reports are available on which to base an estimate of the returns under this act, but they probably amounted to very little. The merchants anticipated the law and imported larger stocks than usual. The one firm which neglected to purchase additional supplies because it was purchasing supplies for the government was exempted from the provisions of the act. On March 12, 1836, the constituent convention decreed that the pro-

¹Barker, "The Finances of the Texas Revolution," in *Political Science Quarterly*, XIX, 617, 623, 624.

²Gammel, *Laws of Texas*, I, 983.

visional government had exceeded its authority in levying import duties, and ordered what had been collected to be repaid.³

The act of December 12, 1835, and the subsequent supplementary acts were makeshifts to serve until the constitutional government could establish a more comprehensive system of tariff duties. Early in the first session of the First Congress the tariff policy of the government was taken up for settlement. On October 4, 1836, President Burnet, in his message to Congress, said:

Duties on imports, and in some cases on exports, constitute a convenient and economical mode of supplying the public necessities, and are less onerous to individuals than almost any other impost. . . . When the abundant intrinsic resources of our country shall be fully developed, then it may be the glory of Texas to invite kindred nations of the earth to an unembarrassed intercommunion of their diversified products.⁴

He made no recommendation except that there be a careful adjustment of the tariff so as to apply equally to all classes and commodities. And it was in this spirit that an act was discussed and passed. On October 11, 1836, Moseley Baker of Austin county moved in the House of Representatives that the committee on ways and means be instructed to prepare a bill to raise revenue by import duties.⁵ On October 19th Branch of Liberty county, chairman of that committee, introduced a measure in keeping with this resolution.⁶ At various times during the following two months the bill came for discussion and minor amendments, though it did not become a political question. The discussion was more or less desultory. On December 15th it passed the House and was sent to the Senate, where it was passed as routine business the same day.⁷

The policy as indicated by this bill was to lay a rather heavy duty on luxuries and a comparatively light one on necessities. For example, on wines and silks an ad valorem duty of 45 per cent and 50 per cent respectively was charged, while on

³Barker, *op. cit.*, 624.

⁴First Congress, First Session, *House Journal*, 13.

⁵*Ibid.*, 34.

⁶*Ibid.*, 58.

⁷*Ibid.*, 219; First Congress, First Session, *Senate Journal*, 97.

necessities, such as breadstuffs, coffee, etc., the duties ranged from 1 per cent to 10 per cent ad valorem. All unenumerated articles were to pay duty at the rate of 25 per cent ad valorem. This made the general average of duties about 25 per cent. Other sections of the bill provided for tonnage duty of 25 cents a ton on all vessels of ten tons or more; for the appointment of proper officials for each district; for the payment of customs dues in treasury notes if paid at once.⁸

The act of December 20, 1836, was to go into operation June 1, 1837. It made no provision for collection districts, however, and no collectors had been appointed before that date.⁹ Before it could become effective, however, the Congress was busy in the preparation of another bill.

The general conditions of trade at that period are summed up very well by Crawford, vice-consul of the British government, in Galveston to O'Gorman, Consul-General in Mexico City. On May 13, 1837, he wrote as follows:

I endeavored to obtain returns of the Trade corresponding to each port, but as they have had no Duties to collect till this time, so they have had no Collectors nor port Officers to collect information, and I am only enabled to form an estimate of what the trade is at present, by what I have seen and conjecture that it will increase proportionately with the population crowding in. At present about 40 Vessels averaging 100 Tons ea[ch] carry on the whole Commerce monthly which would give an aggregate of 48,000 Tons in the year, and they are all under the flag of the United States, with the exception of two or three sailing under the single star of Texas. . . .

The appointment of the necessary Revenue Officers will no doubt be made forthwith, but I have reason to think that a modification of the Tariff will be carried by the present Congress to the effect of authorizing the President to exempt from duty for one year all articles for Agricultural use, provisions of all kinds, seeds

⁸Gammel, *Laws of Texas*, I, 1286; *Telegraph and Texas Register*, June 3, 1837.

There are two insertions of this act in Gammel, *Laws of Texas*. The first insertion gives the rate on unenumerated articles as 20 per cent, and the second at 25 per cent ad valorem. The first is an error. In the *Telegraph and Texas Register* for June 3, 1837, there is a statement from the chief clerk of the State Department saying that the act as passed provided for a rate of 25 per cent ad valorem on all unenumerated articles.

⁹Crawford to O'Gorman, May 13, 1837, in *Texas Historical Association, THE QUARTERLY*, XV, 208.

and plants, Saddlery and Harness, Artificers Tools, Lumber and framed houses with the Glass and fastenings they require, etc.¹⁰

Crawford's opinion that there was likely to be a revision in connection with the subjects named probably indicates some popular objection to the tariff act of the preceding Congress. In the *Telegraph and Texas Register* for May 2, 1837, there is an article giving the price of flour at from \$15 to \$20 a barrel, and stating that sugar, coffee, and other provisions cost three times as much in Houston as in New Orleans. It was likely, then, that a revision in the tariff would cover all articles of necessity such as those listed. And Congress did immediately enter into a discussion of a new tariff measure.

CHAPTER II

THE TARIFF OF JUNE, 1837, AND THE BEGINNING OF OPPOSITION

The real tariff history of the Republic of Texas begins with the act of June 12, 1837. This was the first act to become effective under the constitutional government, and henceforth there was a tariff in operation, though the rates and the methods of collection varied materially. This act is important because it expresses the attitude of a large majority of the tariff advocates throughout the period of the Republic. It is further interesting as it is thus early associated with the land question as a fiscal policy.

In his message to Congress on May 5, 1837, President Houston had nothing to say with regard to the tariff. He did say with regard to the trade of the Republic, however,

Her cotton, sugar, indigo, wines, peltries, live stock, and the precious minerals, will become objects of mercantile activity. To establish such intercourse with nations friendly to us, as will induce them to seek our markets with their manufactures and commodities, and receive from us in exchange our productions, will become our imperative duty.¹¹

On May 13th a resolution was submitted in the House of Representatives on taxation, which was adopted as follows:

¹⁰*Ibid.*, *loc. cit.*

¹¹*Telegraph and Texas Register*, May 9, 1837.

Resolved that the Committee on Ways and Means be instructed to prepare a bill to raise revenue by direct taxation, and also to inquire what amendments are necessary in the law that levies impost duties after the first of June next.¹²

In conformity with this resolution, the chairman of that committee introduced on the 24th an act to raise revenue by import duties.¹³ On the 27th Joseph Rowe of San Augustine county offered a resolution to defer tariff and tax legislation until the question of opening the land offices should be settled, and thus early began the opposition to the tariff of the eastern section. This resolution was defeated, however, by a vote of 14 to 10.¹⁴ The tariff bill was taken up on its second reading on the 31st, and on June 1, it passed its final reading.¹⁵ The amendments to the bill before its final passage indicate an effort to make the duties on necessities light and on luxuries heavy. For example, the original bill had provided for a specific duty of four cents a pound on coffee. This was changed to one cent. The duty on salt was lowered from ten cents a bushel to three cents. On the other hand, the duty on jewelry was raised from 12½ per cent and 25 per cent ad valorem to 33½ per cent.¹⁶ The Senate received the bill on June 1, and under a suspension of rules it was read a first, second, and third time and passed.¹⁷ On the following day it was returned to the House where the Senate amendments were concurred in, and the bill passed to enrollment.¹⁸

The first draft of this act as it was passed to engrossment and enrollment had provided for payment of duties in gold, silver, or properly audited drafts on the treasury. On June 9, the committee on ways and means recalled the bill for an amendment striking out the provision for the use of authenticated treasury drafts, which was passed after an effort of Moseley Baker of Austin had been made to allow the original holders of such drafts

¹²First Congress, Second Session, *House Journal*, 25.

¹³*Ibid.*, 60.

¹⁴*Ibid.*, 72.

¹⁵*Ibid.*, 90.

¹⁶*Ibid.*, 89.

¹⁷First Congress, Second Session, *Senate Journal*, 45.

¹⁸First Congress, Second Session, *House Journal*, 95.

to pay duties with them. Baker's amendment failed by a vote of 11 to 12.¹⁹ The measure received the president's approval June 12.

The preamble to this act declares its purpose to be to raise a public revenue by import duties, to aid in defraying the public expenses, sustaining the public credit, and securing to the public creditors a fair annual or semi-annual interest on their stock in the funded debt. Naturally the protective principle did not appear. There was an effort to lower the price of provisions by admitting them free of duty with a few exceptions. The free list included breadstuffs, including corn, wheat, barley, and oats; pickled beef, salted and smoked pork, neat's tongue; potatoes, beets, beans, rice, and vinegar. Another free list included tools of trade, lumber and building material, firearms and ammunition, these materials being necessary to the development of the country. Some provisions, however, were required to pay a rather heavy duty. Among these were butter, 6¼ cents a pound; white sugar, 4 cents a pound; tea, black, 12½ cents; green, 25 cents a pounds.

The duties on liquors, spirits, and whiskeys were from 25 to 75 cents a gallon, depending on the quality; on wines, from 25 cents to \$2; on silk goods, 30 per cent ad valorem; on jewelry, 33½ per cent; on playing cards, 50 per cent; cigars, \$2.50 a thousand. Iron articles were to pay at the rate of 20 per cent ad valorem. The duties on unenumerated articles were to be at the rate of 25 per cent ad valorem.²⁰

The provision that only gold and silver should be accepted in payment of duties under this act created some confusion. The law of June 7, 1837, creating the audited treasury drafts had provided that they should be receivable for all dues of the government.²¹ Under the assumption that the latter act superseded the former, Henry Smith, the secretary of the treasury, on November 5, 1837, instructed collectors not to receive audited drafts in payment of customs.²² On the 13th he informed them that

¹⁹*Ibid.*, 134.

²⁰Gammel, *Laws of Texas*, I, 1313, 1314.

²¹*Ibid.*, 1301.

²²Smith to Customs Collectors, November 5, 1837, in *Telegraph and Texas Register*, December 2, 1837.

the president had overruled him in the matter, and they were instructed to receive such drafts.²³ On the 15th the House of Representatives called for a copy of these instructions, and on the following day he complied with the request. In his communication to the House he complained of the conflict in the laws, stating that the act of June 12 had provided that duties should be paid in gold, silver, or such current bank paper as the authorities should from time to time direct, and as the proceeds arising from import and tonnage duties were appropriated for the payment of the interest on the funded debt, he did not think that treasury drafts should be receivable.²⁴ On December 24, Congress passed an act prohibiting the payment of duties in audited treasury drafts, but creating treasury notes to the amount of \$150,000, which were to be received together with specie in the payment of customs dues.²⁵

There seems to have been little if any popular objection to the tariff under this act, though it was probably felt that commerce was adversely affected by it. On July 22, 1837, the *Telegraph and Texas Register*, in commenting on the general prosperity, said that commerce seemed to be languishing under a baneful influence. "The attention of government, however, has already been attracted to the evil," the writer optimistically continued,

and we feel confident that under the fostering influence of a liberal policy this powerful arm of the national strength will soon be restored to its wonted energy.

A little later a writer from Galveston was calling attention to the fact that duties on imports and tonnage were being collected, and that the public credit of Texas would be raised thereby, and that the creditors of Texas would be convinced that their claims would be satisfied.²⁶

The campaign for free trade began early in the called session of the Second Congress, and as was usually the case thereafter a representative from the eastern part of the Republic stood

²³*Ibid.*, loc. cit.

²⁴*Ibid.*, loc. cit.

²⁵Gammel, *op. cit.*, I, 1322.

²⁶*Telegraph and Texas Register*, August 5, 1837.

sponsor for the resolution to repeal the tariff acts and declare the ports of Texas free. On September 29, 1837, upon a resolution by Douglass of Nacogdoches a special committee was appointed to report a bill repealing the tariff laws then in force.²⁷

It is interesting to note that as early as June 1, 1837, East Texas began its campaign for free trade, and West Texas its complaint that the eastern portion was escaping taxation. On that date Joseph Rowe of San Augustine county made a proposal in Congress for the abolition of the revenue district of Red River. This was objected to by W. W. Gant of Washington county on the ground that there was no reason why the eastern portion of Texas should be exempted from taxation, while the western portion was laboring under a tariff.²⁸

The committee which had been appointed in the House on September 29, reported with a bill on October 16, which on the 20th was referred to the committee on ways and means.²⁹ On the 23rd the opponents of repeal passed a resolution, introduced by Patten of Bexar county, for the appointment of a committee of five to revise the tariff.³⁰ The effort to repeal the tariff laws was dropped when the bill was submitted to a select committee on November 27th,³¹ which on the 30th reported a substitute providing for an extension of the free list.³² The bill was taken up on its second reading the following day, when an effort was made to remove dried peaches, boots and shoes, beef, bagging and ties, and coffee from the free list. The effort was successful with regard to dried peaches and beef, but it failed with regard to the other articles. The proposal to lay a duty on coffee was defeated by a vote of 24 to 2, the two representatives from Brazoria supporting it. It passed to engrossment by sections at an afternoon session after it had failed during the morning session,³³ and on December 4 it was passed after the duty on un-

²⁷Second Congress, Called Session, *House Journal*, 14.

²⁸*Telegraph and Texas Register*, June 8, 1837.

²⁹Second Congress, Called Session, *House Journal*, 53.

³⁰*Ibid.*, 57.

³¹*Ibid.*, 189.

³²*Ibid.*, 203.

³³*Ibid.*, 210.

enumerated articles had been lowered from 30 to 20 per cent ad valorem.³⁴

The Senate passed a substitute for this bill on December 12, after a substitute by William H. Wharton of Brazoria county providing for an ad valorem duty of 15 per cent on all articles except machinery and immigrants' family stores had been defeated, and a resolution to repeal the tariff laws had been indefinitely postponed.³⁵ The substitute of the Senate was accepted by the House on the 16th,³⁶ and the bill was signed by the president on the 18th.

The general purpose of the act of December 18, 1837, was to reduce the cost of provisions, as well as to make some concessions to the advocates of free trade. Sugar, coffee, tea, salt, flour, breadstuffs, pickled pork, and bacon were the foodstuffs which were added to the free list, while to the industrial free list were added a number of articles of necessity, as iron and steel, household furniture, cotton bagging, bale rope, books, stationery, machinery of all kinds, wagons, carts, harness, with necessary farming utensils, lime, lumber, and implements brought in by immigrants for their own use. The duty on cotton goods was lowered from 15 to 10 per cent ad valorem, and all other articles were left as in the law of June 12, 1837.³⁷

A comparison of prices before the act went into effect with those of a year later shows no marked difference. On August 19, 1837, in the Houston markets butter was selling at 50 cents a pound, coffee at 17 to 20 cents, sugar at 20 cents, and molasses at \$1 to \$1.12½ a gallon. On September 30, 1838, in the same markets butter was selling at 75 cents a pound, coffee at 20 cents, sugar at 17 to 20 cents, and molasses at \$1.50 a gallon.³⁸ The variation in price was due to fluctuation in the currency and to scarcity of those articles in the market, and not to the tariff.

³⁴*Ibid.*, 217.

³⁵Second Congress, *Senate Journal*, 104, 110, 113.

³⁶Second Congress, *House Journal*, 279.

³⁷Gammel, *op. cit.*, I, 1490.

³⁸*Telegraph and Texas Register*, August 19, 1837; September 30, 1838.

CHAPTER III

THE BEGINNING OF THE CAMPAIGN FOR FREE TRADE

After the act of December 18, 1837, there was not another tariff measure passed until February, 1840. This does not signify, however, that the tariff question was not of interest to the people and to Congress in the meantime. The proposal to repeal the tariff laws during the Second Congress was dropped without coming to a vote in the House, but in the Senate it did come to a vote and was postponed indefinitely by a vote of 7 to 3.³⁹ "One of the People" in a communication to the *Telegraph and Texas Register*, July 7, 1838, wanted "the tariff and commerce laws repealed, and the loafers around the custom houses put to work." William H. Wharton read in the Senate on December 11, a memorial from citizens of Brazoria county asking for the abolition of the tariff laws, which was referred to a special committee on the tariff.⁴⁰

The Third Congress met on November 5, 1838. The next day Wharton of Brazoria county announced in the Senate that he would offer at an early date a bill for the total repeal of the tariff except with regard to certain obnoxious articles which he would name,⁴¹ and on the 8th he introduced his bill for repeal, which was referred to a special committee. On the 7th Holmes of Matagorda offered a resolution in the House for the abolition or modification of the tariff, which was referred to the committee on finance, after Kaufman of Nacogdoches county had attempted to amend the resolution by striking out "modification."⁴² Pending the report of these committees there was little discussion of the tariff in either house.

It was during this period that the *Telegraph and Texas Register* took the lead in the advocacy of free trade. The editor, Francis Moore, Junior, on November 14, 1838, in discussing the bills introduced a week earlier for the abolition of the tariff, said that he had long and ardently desired to see such a meas-

³⁹Second Congress, *Senate Journal*, 110.

⁴⁰Third Congress, *Senate Journal*, 47.

⁴¹*Ibid.*, 14.

⁴²Third Congress, *House Journal*, 27.

ure carried into effect. He thought that whatever sums were needed to defray the expenses of government were better raised by a direct tax; that duties were unequal, unjust, and evaded by smugglers. In this connection he said:

This is peculiarly the case at present in some parts of eastern Texas; there are custom-house officers stationed at only two points along that line of frontier extending about six or seven hundred miles from the mouth of the Sabine to the waters of the False Washita or Red River; And it is a singular fact that the net proceeds of the revenue of one of those districts do not amount to one-fortieth part of the expenses of the custom-house officers employed in that district. The population of the districts on that frontier, is greater than that of all the other districts in Texas, and yet the amount of duties paid in to the government from those two districts, amount to less than one-sixth of the duties paid in from the other districts.

The burden of his objection to the tariff, which continued to be the chief cause for objections from this time on, was its inequality. The eastern counties along the Sabine were evading the law, while the West was bearing its whole burden. In replying to the objections to repeal, he said:

The chief objection to the repeal of the tariff is, that the measure may tend to depreciate our currency in the United States, it is said, the demand for it mainly depends upon the revenues. This is a mistake; our currency is sustained in that country as well as at home, mainly because it is based upon the confidence of the people.

He had been well aware that the proposition for annexation to the United States would be unconditionally withdrawn, and that Texas would assume new and important relations with foreign nations. "But it is upon our foreign relations," he said,

that this measure will have the most important bearing; for if our ports are once thrown open to commerce to the world, the inhabitants throughout a large extent of the adjoining States of the Union on the East, and of Mexico on the West, will be induced to procure their supplies for foreign goods through Texas.

In other words, that smuggling would be from Texas instead of into Texas.

In December, 1838, the new president, Mirabeau B. Lamar, was inaugurated, and on December 22, he sent his first annual message to Congress. He said that the bias of his mind was for a total abolition of all duties on imports, and he hoped the time was near at hand to invite the commerce of the world to "our free and open ports." "The radical policy of Texas is anti-tariff," he continued,

because its commercial commodities are of the raw material, which fears no impost rivalry, and paying no contributions to manufactories; yet the immediate adoption of free trade as is proposed by many of our citizens and statesmen, would in the present situation of our country exhibit an apparent recklessness and imprudence, which could not fail to affect our credit abroad. . . . In addition to this, it should be borne in mind, that the revenue collected through custom houses has been, and is still, our chief dependence for sustaining the credit of our public issues, which must most certainly sink into a disastrous and degrading depreciation with the repeal of the imposts. Indeed, if we abolish the Tariff in the present impoverished condition of the treasury, the government will be left destitute of the means of sustaining itself during the interval of collection of the necessary fund by direct taxation, or raising it on foreign loans, which in either case, under the most favorable circumstances, will require several months to effect.⁴³

In his issue of December 29, 1838, the editor of the *Telegraph and Texas Register* denied the validity of Lamar's reasons for opposing a repeal or modification of the tariff, though he admitted that it would be unjust to importers to repeal the laws immediately. He said that there were no manufacturing interests to protect, and nothing to fear from the rivalry of importers. He suggested a gradual increase in direct taxes as the tariff should be gradually repealed.

On November 13, 1838, a resolution was passed in Congress calling for a report from the Secretary of the Treasury, Henry Smith, on the finances of the government. In his reply on the 29th he defended the tariff system at length. He said that the tariff was the easiest and most just form of taxation; that a direct tax was odious and unjust, and could not be relied upon

⁴³Third Congress, *House Journal*, 180, 181.

with certainty; and that the abolition of the tariff would result in too much importation, and take away the means requisite to prosperity. A wise system of duties on imports would make other taxes unnecessary. With regard to the unequal administration of the tariff laws, he said:

If Eastern Texas could be constrained to bear their fair share of revenue equal to their probable imports, the scale would be greatly changed in favor of revenue. It will be seen that the amount of revenue from imports is \$335,955.83, of which Eastern Texas contributes only \$47,522, leaving a balance against that section most numerous populated, of \$288,433.83. It is confidently hoped that congress will adopt such measures as a prudent policy may dictate, to protect and secure collection of duties in that quarter.⁴⁴

The House Committee on Finance, to which had been referred the various tariff measures, made its report on December 22, 1838. They found it to be unjust and inexpedient at that time to abolish the tariff. The national treasury would admit of neither abolition nor modification. They said that if the tariff were either abolished or modified, the only other alternatives were either a loan or an increase of direct taxes; that a loan was but prospective; that the adoption of such a course would cause the monied nations to withhold credit. The committee did not believe that an increase in direct taxes was in accord with a wise and just policy. In defense of the tariff then existing they said that all articles of prime necessity were admitted free of duty, and that a change would benefit only the mercantile interests. This report was immediately adopted without division.⁴⁵

The report of the special committee of the Senate shows a somewhat different attitude toward the general question of a tariff. This committee delivered its report on January 8, 1839.⁴⁶ The report concurred in the recommendations of the president, agreeing that it was inexpedient to abolish the tariff until a loan was secured or direct taxes levied on all lands. For the present the tariff furnished a ready revenue which was available each quarter. After these recommendations, however, the committee

⁴⁴*Telegraph and Texas Register*, January 2, 1839.

⁴⁵Third Congress, *Home Journal*, 206-210.

⁴⁶*Ibid*, 210.

examined the arguments for and against the tariff in comparison with a direct tax, and came to the conclusion that the tariff laws should be blotted from the statute books as early as possible. The argument that the tariff was an indirect tax, and that the people submitted to it because they did not know it was a tax, was ridiculed. The committee said that the people knew they were taxed. The argument that it protected and fostered domestic manufactures was answered by saying that Texas had no manufactures to protect. With regard to the tariff creating a demand for the currency the committee said that it created a demand for only a certain kind of currency, the change notes. They denied that it was inexpensive to collect. They said that the tariff was an encouragement to smuggling. The strongest argument for repeal in the minds of the committee was that the Republic would receive more favorable notice from England and a recognition of independence if free trade were adopted, and that recognition would enable them to make a loan. Finally, the committee thought that a land tax was much more just and equal.⁴⁷ The Senate immediately voted to accept this report without division,⁴⁸ so there was no tariff measure passed during this session, with the exception of one relating to administration, which I shall discuss in another connection.

CHAPTER IV

COMMERCIAL TREATIES AND THE TARIFF OF 1840

The Senate committee on the tariff in the Third Congress had reported in January, 1839, that nothing would do more to secure the favorable consideration of England and a recognition of their independence by her than the establishment of a system of free trade. Before this time, however, the executive department had already tried the tariff and commerce as an instrument to secure recognition of independence, and in the case of the United States to obtain both recognition and annexation. The policy consisted of two well-defined alternatives, the promise of favorable tariff laws and commercial regulations in return for

⁴⁷*Telegraph and Texas Register*, January 16, 1839.

⁴⁸Third Congress, *Senate Journal*, 88.

recognition, or a threat of discriminatory legislation if recognition was not given. With this policy in mind various commissioners had been sent abroad to secure recognition. This policy, out of which grew the low tariff act of February 5, 1840, is of such importance in connection with the tariff that I shall discuss it in some detail.

In November, 1836, William H. Wharton was sent as minister to the United States. He was instructed by Stephen F. Austin, Secretary of State for Texas, to do everything possible to bring about recognition and annexation. He was also to keep in touch with the ministers of England and France, "explaining to them the great commercial advantages that will result to their nations from our cotton, etc. and finding a market here for their merchandise, and an outlet for their surplus population, on the basis of a system of low duties and liberal encouragement which it will be our interest to establish."⁴⁹ Wharton was to cultivate close and intimate relations, however, only in case the policy of the United States should be indifferent or adverse.⁵⁰ In February, 1837, Wharton became rather discouraged, and wrote that he had put the British and French ministers in possession of facts regarding Texas, so that the Republic could turn its attention to a more friendly court if treated unjustly by the United States.⁵¹

The formal instructions to Wharton had not suggested that he use as a threat the possibility of discriminatory legislation against the United States. The instructions were private and only for his information. In December, 1835, Memucan Hunt was sent as Minister Extraordinary to assist Wharton in his negotiations for recognition and annexation, and in case recognition had been granted he was to urge commercial reasons for annexation.

In addition to the reasons given in the former instructions you may urge it on the ground of the verry great commercial advan-

⁴⁹Austin to Wharton, November 18, 1836, in Garrison, *Diplomatic Correspondence of the Republic of Texas* (Annual Report of the American Historical Association, 1908), I, 137.

⁵⁰*Ibid.*, I, 140.

⁵¹Wharton to Rusk, February 12, 1837, in Garrison, *Dip. Cor. Tex.*, I, 185.

tages as well as the naval strength which it would give to the United States, for in the event of the refusal of that government to receive this Country into the Union either as a State or a Territory it may become necessary for Texas to form a Treaty of amity and commerce with England or some other European power which would forever and entirely preclude the people of the United States from enjoying any of the benefits resulting in Texas from the richness of her soil commerce etc etc These reasons may be forcibly impressed particularly upon the Representatives of the Northern States from whom we may expect to meet the greatest opposition, because should Texas be attached to the United States the immense consumption of those articles principally manufactured in the United States will more than compensate for the additional strength which annexation will add to the political influence of the South. The great and abundant supply of raw material from this Country will reduce the price which they will have to pay for the same and at the same time keep it at a more uniform price thus preventing the great fluctuations so frequently occurring in the United States to the distress and ruin of thousands. As things now are in the United States a partial failure one year will raise the price of the raw material much above its intrinsic or ordinary value, the next it will be suddenly reduced by an abundant crop, but open as this Country would do an immense territory for the production of cotton—land the richest and most productive in the world these fluctuations would not occur, as no failure w[h]ich could ordinarily happen would visibly shorten the supply. On the other hand should the Government of the United States refuse to admit this Country into the Union etc etc Texas would in all probability in order to gain immediate wealth strength and respectability be induced to form a treaty with England by which all the advantages of commerce wealth and strength would be fo[r]ever lost to the United States and important advantages given to a power on her southern border w[h]ich already confines her on the North.⁵²

The independence of Texas was recognized by the United States, March 1, 1837, shortly after the arrival of Hunt in Washington.⁵³ It is likely that the desire for a field of commercial expansion, and the danger that Texas would form commercial treaties with other countries, played considerable part

⁵²Henderson to Hunt, December 31, 1836, in Garrison, *Dip. Cor. Tex.*, I, 163.

⁵³Garrison, *Westward Extension*, 91.

in influencing the United States to extend recognition. On February 2, 1837, Jackson wrote to a member of the House of Representatives,

There is no doubt if the Independence of Texas be not acknowledged by the U. States, an effort will be made by Texas to Great Britain to have the Independence of Texas acknowledged by her, giving & securing to Great Britain as a consideration, exclusive commercial benefits.⁵⁴

In August, 1837, John Forsyth, the American Secretary of State, acknowledged to Memucan Hunt, the Texas Minister Plenipotentiary, that the controlling reason for the acknowledgment of Texan independence by the United States was that Texas had proved herself worthy of independence, but still that the hope was entertained that Texas would see the benefit of sustaining amicable relations with the United States and abstaining from forming connections abroad.⁵⁵

Hunt was presented to the president, July 6, 1837, and on August 4, he sent a long communication to Forsyth urging annexation, in accordance with his instructions. After listing the commercial advantages that would accrue to the United States if Texas should be annexed, he said:

As an independent Power, her interests would conflict with those of the United States, and without annexation her struggle in the formation of commercial treaties would most naturally be directed to the establishment of the principle of a preference of her cotton and other products in foreign markets over those of the United States, and such relations, when once established would, it will be perceived, very much embarrass if not render totally impractical a treaty of annexation. . . .

It would be impracticable for either Power to enforce its revenue system, and should the tariffs of the two countries differ essentially as must be the case, nothing but the enforcement of the most cruel and unpopular laws could possibly secure the just collection of custom house duties.⁵⁶

Forsyth in his reply, August 25, said no fear was felt but

⁵⁴Jackson to Howard, February 2, 1837, in Smith, *The Annexation of Texas*, 60.

⁵⁵Forsyth to Hunt, August 25, 1837, in 25th Congress, 1st Session, House Documents, 40, p. 12.

⁵⁶Hunt to Forsyth, July 6, 1837, in *Ibid.*, p. 12.

that Texas would accord to the citizens and vessels of the United States the same impartial treatment that the United States accorded to the citizens and vessels of other countries; that if Texas saw fit to adopt a liberal commercial policy with regard to the United States, she would be met in a corresponding spirit by his government; but that

If the answer which the undersigned has been directed to give to the proposition of General Hunt should unfortunately work such a change in the sentiments of that government as to induce an attempt to extend commercial relations elsewhere upon terms prejudicial to the United States, this government will be consoled by a consciousness of the rectitude of its intentions, and a certainty that although the hazard of transient losses may be incurred by a rigid adherence to just principles, no lasting prosperity can be secured when they are disregarded.⁵⁷

In his reply, September 12, 1837, Hunt said that recognition by the United States did not bind the foreign policies of Texas; that since the manufacturing interests of the United States were dependent upon the tariff, Texas could not guarantee any benefit to those interests, even if the United States should be treated as the most favored nation. He disclaimed any purpose to threaten the passage of any laws directed at the commerce of the United States, but said that the policy of Texas would be to pass laws for the benefit of Texas regardless of their effects on others. He struck more directly at the West when he said:

Should it be found necessary or expedient hereafter, for the proper promotion of the interests of her citizens to lay high duties upon the cotton-bagging so extensively manufactured in the Western States, and upon the pork and beef and bread-stuffs so abundantly produced in that region, such as would amount to almost total prohibition of the introduction of those articles into the country, much as her government and people would regret the necessity of the adoption of such a policy, she would be exculpated from the slightest imputation of blame for taking care of her own welfare and prosperity after having been refused admission into this Union.⁵⁸

How much of this threat of legislation directed against the

⁵⁷Forsyth to Hunt, August 25, 1837, in *Ibid.*, p. 13.

⁵⁸Hunt to Forsyth, September 12, 1837, in *Ibid.*, p. 16.

commerce of the United States in case annexation should fail, was real, it is difficult to say. It is clear, however, that it was intended that the United States should consider it a real danger; and as that policy was carried out in 1840 and 1842, we are justified in assuming that the Texan government had it definitely in mind as an alternative upon the failure of annexation.

On February 17, 1838, the First Comptroller of the Treasury of the United States ordered all officers of the customs to give Texan vessels and products the benefit of the fifth and sixth articles of the treaty between the United States and Mexico.⁵⁹ These articles provided for complete reciprocal tonnage and other local dues, and that the same duties should be charged whether the articles were imported in Mexican or American vessels.⁶⁰ On March 26, John Birdsall, Acting Secretary of State for Texas, responded with an equivocal agreement,⁶¹ and after April 5, 1838, the commercial terms of the treaty with Mexico were in force between Texas and the United States until 1841, when the treaty expired.

Early in 1841, the Texan government decided to open negotiations with the United States for a treaty of commerce, but on account of the death of President Harrison the Texan minister did not get into communication with Webster, the American Secretary of State, till April 12.⁶² At various times during the following year the Texan ministers urged the formation of a treaty, but it was not until August 3, 1842, that the draft of a treaty was signed.⁶³ It provided among other things for freedom of commercial intercourse, reciprocal duties, free use of the Red River and other rivers rising in Texas or forming a boundary between Texas and the United States, the unrestricted right of deposit for five years, and the reshipment of goods to foreign ports without payment of duty in the United States.⁶⁴ The treaty was ratified with some changes by the Texan Senate on

⁵⁹Garrison, *Dip. Cor. Tex.*, I, 313, 314.

⁶⁰41st Congress, 3rd Session, Senate Executive Documents, No. 36, p. 546.

⁶¹Birdsall to Labranche, March 26, 1838, in Garrison, *Dip. Cor. Tex.*, I, 322.

⁶²Marshall, in *THE QUARTERLY*, XV, 275

⁶³*Ibid.*, 283.

⁶⁴*Ibid.*, 283, 284.

January 16, 1843, but the Senate of the United States struck out the articles relating to commerce,⁶⁵ and it failed of ratification.

On October 12, 1838, Texas formally withdrew its proposal of annexation and began a more serious effort to secure recognition and to form commercial treaties in Europe.⁶⁶ The first minister from Texas to the United States had been instructed, as we have seen, to keep in touch with the ministers of the European countries, keeping them informed of the conditions in the Republic of Texas in case the United States proved indifferent.⁶⁷ In keeping with this policy, J. Pinckney Henderson was sent as Minister to England in July, 1837. Early in October he held a conference with Palmerston, Minister of Foreign Affairs in the British Cabinet, on the subject of recognition, giving as his chief argument for recognition the commercial benefits that would follow. "He then observed," said Henderson in reporting the conversation,

that he supposed that the disposition of the People of Texas to be annexed to the United States decreased in Proportion to their increased confidence in their own strength and ability to maintain their own independence—to which I readily assented and at the same time observed that the people of Texas were aware that they would possess many advantages as an independent Nation, which they could not enjoy as an integral part of the United States—that as an independent Nation, they would not be subject to be agitated by the local jealousies and struggle for political ascendancy between the North and the South, which has so long disturbed the harmony of the States—that Texas never could be a manufacturing nor a *commercial* people, at least so far as the *Carrying Trade* was concerned, that it would be greatly to her interest to be able to open her ports to every nation, and invite the manufacturies of every country to equal competition in our markets, and exchange with us the manufactured articles for the raw material, some of which we could supply in the greatest abundance,—that as an independent power, we would be free from the operation of the protective Tariff

⁶⁵*Ibid.*, 285, 292.

⁶⁶Garrison, *Westward Extension*, 96; Jones to Irion, in Garrison, *Dip. Cor. Tex.*, I, 348.

⁶⁷Austin to Wharton, November 18, 1836, in Garrison, *Dip. Cor. Tex.*, I, 137.

which had so long oppressed the Southern planting States of the Union, that England then could come into our markets on a perfect equality with the Northern States and that considering the low price of labor in this country, they could drive from our markets the manufactured articles of all other countries and also engross the carrying trade of Texas.⁶⁸

Palmerston was unwilling to grant recognition at that time or enter into a commercial treaty with Texas, which would be tantamount to recognition; but on April 6, 1838, he did agree to allow Texan ships the same privileges granted to Mexican ships in English ports, in return for a similar agreement on the part of Texas with regard to English ships in Texan ports.⁶⁹ Finding that no other concessions were likely at that time and that the British ministers were averse to discussing the matter, Henderson proceeded to France to see what could be done there.⁷⁰ He entered into a most favored nation agreement with that country, November 7, 1838,⁷¹ and about a year later he secured recognition and a treaty of amity, commerce, and navigation.⁷²

In 1839, James Hamilton was sent to Europe as loan commissioner for the Republic of Texas, and to assist in securing recognition. He wrote to Palmerston, October 14, 1840, repeating the arguments used by Henderson in 1837, and added that Texas had passed a law levying discriminatory duties against all nations which should not have acknowledged her independence by February 1, 1841, and that Great Britain had an obvious interest in avoiding this discriminatory duty.⁷³ He managed to secure a commercial treaty, November 13, 1840. Ratifications were not exchanged on this treaty, however, until June 28, 1842, because Texas had held up the ratification of the treaty prohibiting the slave trade until January 22, 1842.⁷⁴

⁶⁸Henderson to Irion, October 14, 1837, in Garrison, *Dip. Cor. Tex.*, III, 815.

⁶⁹Palmerston to Henderson, April 6, 1838, in Garrison, *Dip. Cor. Tex.*, III, 857.

⁷⁰Henderson to Irion, June 2, 1838, in Garrison, *Dip. Cor. Tex.*, III, 1207.

⁷¹Henderson to Irion, November 12, 1838, in Garrison, *Dip. Cor. Tex.*, III, 1233.

⁷²Gammel, *Laws of Texas*, II, 655.

⁷³Adams, *British Interests and Activities in Texas*, 53.

⁷⁴*Ibid.*, 87, 88; First Biennial Report Texas Library and Historical Commission, *Secret Journals of the Republic of Texas*, 218.

The treaty with France provided for complete reciprocity as to tonnage, lighthouse charges, and port charges; the products of the soil of either country were to pay the same duties whether imported in French or Texan vessels, and products exported were to enjoy the same privileges, allocations, and drawbacks, as were allowed the same articles of the country from which they were exported; cotton was to be admitted into France on the same terms from Texas as from the United States; French fabrics of silk or part silk were to pay one-half the duty as similar goods from other countries if carried in a French or a Texan vessel, and in every case the duty was to be as low for France as for any other nation; on wines and brandies the duty was to be two-fifths and one-fifth that of other countries, depending on quality. An additional article provided that if Texas diminished the duties on silk it would maintain between silk goods produced in countries beyond the Cape of Good Hope and similar goods of other countries a difference of 10 per cent in favor of the latter.⁷⁵

By the authority of the Tariff Act of 1840, which gave the president the right to make any arrangement for carrying into effect the treaty with France, President Lamar, shortly after the receipt of the treaty, issued a proclamation admitting French wines free of duty.⁷⁶ This proclamation was revoked by President Houston, December 21, 1842, as being unwarranted under the law.⁷⁷

The treaties with Great Britain and Holland were uniform in their terms. Both provided for the admission of goods from each country into Texas and from Texas into the other countries under the most favored nation agreement, and that no special concessions were to be granted to other countries which were not allowed to the country forming the treaty as to tonnage, harbor fees, lighthouses, pilotage, quarantine, etc.⁷⁸

In a letter to James Hamilton, Texas loan commissioner to France, February 24, 1840, the Texan Secretary of State, Abner Lipscomb, suggested a very favorable tariff system to apply only to France, provided France would guarantee a loan. The ports

⁷⁵Gammel, *op. cit.*, 655.

⁷⁶Gammel, *op. cit.*, II, 660.

⁷⁷*Ibid.*, II, 878.

⁷⁸*Ibid.*, II, 880, 905.

of Texas were to be open to French goods, and the Texan authorities were to facilitate the expansion of French commerce into Mexico and the United States through smuggling.⁷⁹ Nothing came of this, however. The following year Hamilton sent to Texas a memorandum of a tentative agreement with Belgium by which Texas should admit cotton and woolen goods, iron, and linen manufactured in Belgium at one-half the existing duty, while the same articles from other countries should be required to pay at the rate of 50 per cent ad valorem. Arms and ammunition were to be admitted free for the Belgians, while other countries were to pay a duty of 100 per cent ad valorem. The coasting trade of Texas was to be free to Belgian vessels the same as to Texan. In return for this Belgium was to guarantee a loan of 37,000,000 francs by a specific endorsement of the bonds of the Republic of Texas. This plan was rejected by the Texan Senate, October 20, 1841, with very little discussion.⁸⁰ There was no further effort to make use of tariff and commercial discrimination in order to secure a loan.

The Tariff Act of February 5, 1840, was directly in accordance with the policy of the adoption of practical free trade in return for recognition of independence. The rate of duties was very low, 15 per cent ad valorem on all articles except a few on which a specific duty was charged, and a few that were admitted free. On account of the depreciated condition of the currency at that time the rate was not really more than 3 per cent.⁸¹ Specific duties were levied on wines, liquors, etc., at from 10 per cent ad valorem to \$2 a gallon. The free list consisted of books, farming utensils and implements of husbandry, furniture which had been used and in use to the amount of \$500, tools or the implements of trade of immigrants, wearing apparel and other personal baggage in actual use and belonging to persons arriving in the country.⁸² For the execution of the treaty with France the president was authorized to enter into any agreement with France in conformity with the treaty of

⁷⁹Lipscomb to Hamilton, February 24, 1840, in Garrison, *Dip. Cor. Tex.*, III, 1277.

⁸⁰*Secret Journals of the Senate of the Republic of Texas*, op. cit., 222, 224.

⁸¹Lamar's Message to Congress, Fifth Congress, *House Journal*, 25.

⁸²Gammel, op. cit., II, 209-225.

amity and commerce.⁸³ A drawback was to be allowed on re-exported goods, but not to a contiguous State, which would apply only to the United States and Mexico.⁸⁴

It cannot be shown that this act or the commercial treaties had the effect of discouraging trade with the United States to any marked degree. The first British vessel from England direct to Texas was the barque *Amabassador*, which arrived the latter part of February, 1839. She was received with great rejoicing, because her arrival seemed to be the forerunner of a direct trade with England.⁸⁵ But from January 1 to September 30, 1840, only three British vessels, two ships and one brig, came to Texas, while during the same period 285 vessels of different sizes came from the United States. The remaining vessels entering the ports of Texas were one from France, two from Sweden, and one from Cuba.⁸⁶ This indicates that most of the trade was with the United States, and that the United States was doing almost all the carrying trade. In fact, of the total imports for the year ending July 31, 1843, valued at \$471,205.32, the United States furnished \$412,983.03, while all the other countries sent the remainder. Of exports for the same period the United States received \$281,342.64 out of a total of \$415,768.75. For the following year the same ratio held as to imports, though less than half the exports went to the United States, England receiving almost as much. From July 31, 1843, to July 31, 1844, the total exports amounted to \$615,119.34, of which the United States received \$249,151.62, while England received \$205,345.05. The difference here occurs because the chief article of export from Texas was cotton, and as the United States was raising a surplus and exporting cotton itself, the Texans found no market there, and of necessity sent their cotton to England and other European countries. The Hanse Towns were the other large importers of Texan produce, of which they received \$112,095.46. For the fifteen months ending October 31, 1845, the United States furnished \$1,151,733.21 out of a total of \$1,204,370.22. Exports showed about the same ratio as for the pre-

⁸³*Ibid.*, 217.

⁸⁴*Ibid.*, 224.

⁸⁵Kennedy, *Texas*, 345.

⁸⁶*Telegraph and Texas Register*, June 9, 1841.

ceding period, though for this period the United States received more than half, \$486,327.16, out of a total of \$829,215.04.⁸⁷

On January 27, 1842, a tariff act was passed, one provision of which was that there should be a five per cent additional duty when goods were brought in vessels of countries with which Texas had no treaty.⁸⁸ The object of this was to hasten the conclusion of a commercial treaty with the United States; but the figures just given indicate that this discriminatory duty had little if any effect. I have given above the total of importation and the value of the importation from the United States for the period of 15 months from August 1, 1844, to October 31, 1845. The customs for that same period amounted to \$310,473.01, of which the augmentation on account of the additional five per cent duty was \$34,476.45.⁸⁹ This predominance of American products was due to the fact that the importations consisted of articles produced in the United States in such quantities that they could compete with other countries in spite of the discriminatory duty.⁹⁰

(Continued.)

⁸⁷These figures are from Gouge, *A Fiscal History of Texas*, 277. No records remain for earlier dates.

⁸⁸Gammel, *op. cit.*, II, 784.

⁸⁹Report of the Secretary of the Treasury, in First Legislature, *Senate Journal*, ap. 70.

⁹⁰I shall give elsewhere a detailed list, as far as possible, of imports and exports.